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November 23, 2015

*Via e-mail and first class mail*

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Air Protection Division

RE: Energy Answers Baltimore, LLC Permit Expiration (PSC. Case No. 9199)

Dear Secretary Grumbles and Regional Administrator Garvin:

I am writing to follow up on an August 12, 2015 letter addressed to Secretary Grumbles from the Environmental Integrity Project ("EIP") and eighteen additional groups requesting that the Maryland Department of the Environment ("MDE") issue a determination that the air quality provisions of the Certificate of Public Convenience and Necessity ("CPCN") held by Energy Answers Baltimore, LLC ("Energy Answers") have expired due to a lapse in construction of over 18 months.<sup>1</sup>

We have not received any response from MDE to our August 12, 2015 letter and are writing to provide additional relevant information. Attachment A provides a January 20, 2010 letter from the Pennsylvania Department of Environmental Protection ("PADEP") notifying Robinson Power Company, LLC ("Robinson") that the Plan Approval for<sup>2</sup> its Beech Hollow waste coal plant expired "by operation of law" due to a lapse in construction. Specifically, PADEP states:

A greater than 18 month lapse in construction has occurred at the Beech Hollow Plant site. Consequently, by operation of law [Robinson's Plan Approval] has

<sup>1</sup> Copies of the August 12, 2015 letter and attachments are enclosed with this letter for the recipients at the U.S. Environmental Protection Agency ("EPA"), to whom we have not previously provided these materials.

<sup>2</sup> The Plan Approval constituted the Clean Air Act Prevention of Significant Deterioration ("PSD") permit for the Beech Hollow plant.

lapsed and is no longer valid. If you wish to construct the facility, you must submit a new plan approval application to the Department.

PADEP took this action after receiving a November 9, 2009 letter from the U.S. EPA, Region 3,<sup>3</sup> stating that the alleged construction activities at the plant site were not sufficient to meet the continuing construction requirements of 40 C.F.R. § 52.21 and concluding that the “plan approval is not valid.”<sup>4</sup> EPA found that:

None of [the activities claimed by Robinson in a September 23, 2009 letter to be construction] appears to meet the requirement of ‘physical on-site construction activities on an emissions unit which are of a permanent nature.’ All but two of the projects appear to be in the nature of planning and procurement and did not involve any “physical on-site construction.” The two projects that arguably involved physical construction (the access road construction and water and gas line relocation, and the CEMS building foundation) do not appear to be related to construction on an “emissions unit[.]” . . . .

EPA further warned that “[s]hould Robinson at this time undertake any activities that constitute ‘actual construction’ without first applying for and obtaining a valid plan approval from PADEP, any such activities would be in violation of the federal Clean Air Act and the approved Pennsylvania State Implementation Plan.”

The facts of the Beech Hollow matter are very similar to the facts of the present matter regarding the Energy Answers waste combustion facility. Based on the most recent documents available to us, Energy Answers has performed no construction of the permitted source, a 4,000-ton-per-day waste incinerator, since October 31, 2013. A site inspection report for a September 17, 2015 inspection by MDE states: “Incinerator Building Location: No new construction activities were observed at this location. The area appears to be in the same condition as observed during the last MDE inspection of June 3, 2015.”<sup>5</sup> As noted in our August 12, 2015 letter, MDE’s June 3, 2015 inspection report states that “it was observed that the company has not performed any additional construction work on-site since MDE’s last inspection of February 28, 2014” and the February 28, 2014 report states that “[d]uring [that] site inspection, it was confirmed that Energy Answers has not performed any additional work since MDE’s last inspection of November 1, 2013.” In addition, the quarterly construction reports being filed by Energy Answers with MDE fully support these facts. The last activity described in these reports that can be considered construction is the driving of pilings for the stack, which ended on October 31, 2013.

Like the Plan Approval for the Robinson Beech Hollow plant in Pennsylvania, the air quality provisions of Energy Answers’ CPCN have expired by operation of law due to a lapse in construction of more than 18 months. We request that MDE follow the lead of the PADEP and issue a written determination to this effect.

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<sup>3</sup> EPA’s November 9, 2009 letter is attached as Attachment B along with the September 23, 2009 letter from Robinson to which EPA’s letter responds.

<sup>4</sup> 40 C.F.R. § 52.21 is incorporated by reference into Energy Answers’ CPCN at Condition A-9(g).

<sup>5</sup> MDE’s site inspection report for the September 17, 2015 inspection is attached as Attachment C.

Thank you for your consideration and we look forward to your response.

Sincerely,



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